JUDGE KOELTL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 CV 4407 Index No.:

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RALPH STORRIER

Plaintiff,

-against-

RR DONNELLEY FINANCIAL, INC., and
JOHN HILI, individually,

Defendants.

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COMPLAINT

Plaintiff Demands a Trial By Jury

JUN 05 2012
U.S.D.C. S.D. N.Y.
CASHIERS

Plaintiff, RALPH STORRIER, by his attorneys, the Arcé Law Group PC, upon information and belief, complains of Defendants as follows:

NATURE OF THE CASE

1. Plaintiff brings this action charging that the Defendants violated Plaintiff's rights under the Family Medical Leave Act ["FMLA"]; retaliated against him for requesting to take leave under the FMLA; harassed, discriminated against, and discharged Plaintiff the basis of his disability and/or perceived disability, sexual orientation, and his report of sexual harassment in the workplace in violation of the Administrative Code of the City of New York and the laws of the State of New York; and to recover lost wages, an additional amount as liquidated damages, punitive damages, reasonable attorneys' fees, and costs.

JURISDICTION

2. Jurisdiction of this action is conferred upon the court as this action involves a Federal Question under the FMLA. The Court also has jurisdiction pursuant to 42 U.S.C. §12101 et. Seq.; 29 U.S.C. §2617; 28 U.S.C. §1331, §1343 and pendent jurisdiction thereto.

3. Venue is proper in this district based upon the fact that a substantial part of the events or omissions giving rise to the claim occurred within the Southern District of the State of New York. 28 U.S.C. §1391(b).

PARTIES

4. Plaintiff is a homosexual male resident of the State of New York, County of Kings.
5. Plaintiff is HIV positive.
6. At all times material, Defendant RR DONNELLEY FINANCIAL, INC. (herein also referred to as "RR DONNELLEY") was and is a foreign business corporation duly incorporated under the laws of the State of Delaware.
7. At all times material, Defendant RR DONNELLEY was and is a foreign business corporation authorized to do business in the State of New York.
8. At all times material, Defendant RR DONNELLEY was and is a foreign business corporation that does conduct business in the State of New York.
9. At all times material, Defendant JOHN HILI (herein also referred to as "HILI") was and is an employee of Defendant RR DONNELLEY.
10. At all times material, Defendant HILI was Manager of Defendant RR DONNELLEY's Venue Department.
11. At all times material, Defendant HILI was Plaintiff's supervisor and/or had supervisory authority over Plaintiff.
12. Defendant RR DONNELLEY and Defendant HILI are herein collectively referred to as "Defendants."
13. At all times material, Plaintiff was an employee of Defendants.

14. At all times material, Plaintiff was a qualified employee under the FMLA.

15. At all times material, Defendant RR DONNELLEY was and is a qualified employer under the FMLA.

MATERIAL FACTS

16. On or about October 1, 2007, Plaintiff began his employment with Defendants as a "Customer Service Representative."

17. Plaintiff was open about his homosexuality with Defendants' employees and most employees knew that he had a same-sex life partner.

18. In or around March 2011, Defendant HILI said to Plaintiff, **"I don't think that you fit into the Donnelley culture,"** referring to Plaintiff's sexual orientation.

19. In or around July 2011, when the United States Congress was repealing the military's "Don't Ask, Don't Tell" Policy, Defendant HILI said in the office in front of Plantiff, **"I don't care what the government says, in this office, we still have a 'Don't Ask, Don't Tell' policy."**

20. In or around September 2011, Plaintiff became aware of an incident of sexual harassment between two other employees, Gilbert and Alyssa.

21. In or around October 2011, Plaintiff reported Gilbert's sexual harassment of Alyssa (who had already quit because of the incident) on Defendants' Website Complaint Hotline.

22. Plaintiff specifically reported that Gilbert touched Alyssa in a sexual and inappropriate manner whenever he would talk to her.

23. Plaintiff also complained that Gilbert consistently said inappropriate comments to all of the female employees and that is why four (4) female employees had already left.

24. Plaintiff received no response from the Human Resources Department. Plaintiff re-visited Defendants' Website where he learned that "the issue had been resolved."

25. In or around the middle of October 2011, Defendants' Human Resources Department stated they would be meeting with each employee and Defendant HILI in response to various complaints.

26. During this meeting, Plaintiff again complained about the sexual harassment and hostile work environment. Plaintiff stated that he already complained but nothing had changed.

27. In or around the end of October 2011, Plaintiff told Defendant HILI that he would have to take several days off from time to time for a medical condition (HIV) and that he was going to file for FMLA.

28. Defendants originally denied Plaintiff's FMLA application because he could not include "specific days." Plaintiff informed Defendants that he would require intermittent days off in order to have periodic tests and doctor's appointments.

29. In retaliation for Plaintiff's complaints and Plaintiff's request for FMLA leave, Defendant HILI stopped speaking to Plaintiff or acknowledging Plaintiff, whereas he used to have a friendly demeanor towards Plaintiff.

30. In retaliation for Plaintiff's complaints and Plaintiff's request for FMLA leave, Defendant HILI began to overly criticize Plaintiff's work.

31. In or around January 2012, Defendant HILI told Plaintiff that he could leave a little early if the work flow permitted.

32. On or about February 23, 2012, Defendant HILI terminated Plaintiff under the pretext that he was incorrectly submitting his timesheets and that he was leaving early.

33. Defendants' reason for terminating Plaintiff is pretext as Defendants implemented the timesheet system in or around September 2011 but never provided any training.

34. Plaintiff was never told he was submitting the timesheets incorrectly.

35. Plaintiff also said to Defendant HILI "you told me I could leave early if work flow permitted." Defendant HILI responded, "I never said that."

36. Defendants' other employees were incorrectly submitting their timesheets and leaving early with authorization but were not terminated.

37. On or about February 23, 2012, Defendants terminated Plaintiff for having requested qualified FMLA leave.

38. On or about February 23, 2012, Defendants terminated Plaintiff in order to interfere with his ability to take FMLA leave.

39. On or about February 23, 2012, Defendants terminated Plaintiff because of his disability and/or perceived disability (HIV status).

40. On or about February 23, 2012, Defendants terminated Plaintiff for having complained about the sexual harassment and hostile work environment.

41. Defendants' reason for terminating Plaintiff was pretext to cover their discriminatory animus towards Plaintiff for having complained about Defendants' unlawful practices.

42. On or about February 23, 2012, Defendants terminated Plaintiff because of his sexual orientation.

43. As a result of Defendants' actions, Plaintiff felt extremely humiliated, degraded, victimized, embarrassed, and emotionally distressed.

44. As a result of Defendants' discriminatory and intolerable treatment of Plaintiff, he has suffered severe emotional distress and physical ailments.

45. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer the loss of income, the loss of a salary, bonuses, benefits and other compensation which such employment entails, and Plaintiff has also suffered future pecuniary

losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

46. As Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law, Plaintiff demands Punitive Damages as against the Defendant.

AS A FIRST CAUSE OF ACTION
UNDER THE FAMILY MEDICAL LEAVE ACT
FAILURE TO PROVIDE LEAVE

47. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

48. § 2612 of the FMLA states in pertinent part:

49. (a) In general

> (1) Entitlement to leave: Subject to section 2613 of this title, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:
>
> > (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

50. Defendants violated Plaintiff's FMLA rights by failing to provide him with appropriate leave there under and terminating Plaintiff because he requested to take such protected leave.

AS A SECOND CAUSE OF ACTION
UNDER THE FAMILY AND MEDICAL LEAVE ACT
RETALIATION & INTERFERENCE

51. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if same were set forth herein fully at length.

52. § 2615 of the Act states as follows:

53. Prohibited acts

(a) Interference with rights

(1) Exercise of rights

(a) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.

(2) Discrimination

(b) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter.

54. Defendants interfered with Plaintiff's rights under the above sections, discriminated against Plaintiff, and terminated Plaintiff from his employment for exercising his FMLA right to take leave, and in order to interfere with Plaintiff's right to take further FMLA qualified leave.

AS A THIRD CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
DISCRIMINATION

55. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

56. The Administrative Code of City of NY § 8-107 [1] provides that "It shall be an unlawful discriminatory practice: "(a) For an employer or an employee or agent thereof, because of the actual or perceived . . . disability . . . of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment."

57. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Title 8, §8-107(1)(a) by discharging, creating and maintaining

discriminatory working conditions, and otherwise discriminating against Plaintiff because of his disability, and/or perceived disability (HIV status), and his sexual orientation.

AS A FOURTH CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
RETALIATION

58. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

59. New York City Administrative Code Title 8-107(7) provides that:

> "It shall be unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter…"

60. Defendants engaged in an unlawful and retaliatory discriminatory practice by retaliating, and otherwise discriminating against Plaintiff, including, but not limited to terminating Plaintiff's employment.

AS A FIFTH CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
SUPERVISOR LIABILITY

61. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

62. New York City Administrative Code Title 8-107(13) Employer liability for discriminatory conduct by employee, agent or independent contractor.

a. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.

b. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:

(1) the employee or agent exercised managerial or supervisory responsibility; or

(2) the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or

(3) the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

63. Defendants violated the section cited herein as set forth.

AS A SIXTH CAUSE OF ACTION
UNDER STATE LAW
DISCRIMINATION

64. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

65. Executive Law §296 provides that "1. It shall be an unlawful discriminatory practice: "(a) For an employer or licensing agency, because of an individual's…sex [or] sexual orientation [or] disability, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

66. Defendants engaged in an unlawful discriminatory practice by discriminating against Plaintiff because of his sexual orientation and his disability and/or perceived disability (HIV status).

67. Plaintiff hereby makes a claim against Defendants under all of the applicable paragraphs of Executive Law §296.

AS A SEVENTH CAUSE OF ACTION
UNDER STATE LAW
AIDING AND ABETTING

68. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

69. New York State Executive Law §296(6) provides that it shall be an unlawful discriminatory practice:

"For any person to aid, abet, incite compel or coerce the doing of any acts forbidden under this article, or attempt to do so."

70. Defendants engaged in an unlawful discriminatory practice in violation of New York State Executive Law §296(6) by aiding, abetting, inciting, compelling and coercing the discriminatory conduct.

AS AN EIGHTH CAUSE OF ACTION
UNDER STATE LAW
RETALIATION

71. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

72. New York State Executive Law §296(7) provides that it shall be an unlawful discriminatory practice:

> "For any person engaged in any activity to which this section applies to retaliate or discriminate against any person because [s]he has opposed any practices forbidden under this article."

73. Defendants engaged in an unlawful discriminatory practice by discharging, retaliating, and otherwise discriminating against the Plaintiff because of Plaintiff's opposition to the unlawful employment practices of Plaintiff's employer.

WHEREFORE, Plaintiff respectfully requests a judgment against the Defendants:

A. Declaring that the Defendants engaged in unlawful employment practice prohibited by The Family Medical Leave Act, The New York City Administrative Code Title 8, §8-107 et. Seq., and New York Executive Law and that the Defendants harassed, discriminated against, discharged, and retaliated against Plaintiff on the basis of his disability, and/or perceived disability, his sexual orientation and his complaints about Defendants' sexual harassment and hostile work environment.

B. Awarding damages to the Plaintiff, retroactive to the date of his actual discharge, for all lost wages and benefits resulting from Defendants' unlawful employment practices;

C. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to her reputation;

D. Awarding Plaintiff punitive damages;

E. Awarding Plaintiff liquidated Damages under the FMLA;

F. Awarding Plaintiff attorney's fees, costs, and expenses;

G. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy Defendants' unlawful employment practices.

JURY DEMAND

Plaintiff requests a jury trial on all issues to be tried.

Dated: New York, New York
May 22, 2012

Arcé Law Group, P.C.
Attorneys for Plaintiff

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